

**REMARKS**

Claims 1 through 61 are pending in the application.

Claim 61 has been newly added by this amendment. Support for new claim 61 is found in the specification at page 12, lines 14-16. No new matter has been added.

**I. Restriction Requirement**

The Examiner has required restriction of claims among Group I, claims 1-32, 52 and 58-60, directed to a method for protecting against oxygen free radical by manipulating the concentration of fuel gas in tissues, Group II, claims 33-37, directed to a ventilator for delivering breathable gas and fuel gas to a user, Group III, claims 38-42, directed to a building ventilation system for delivering breathable gas and fuel gas to a building, Group IV, claims 43-51 and 53, directed to an exposure chamber for delivering breathable gas and fuel gas to a user, and Group V, claims 54-57, directed to a helmet breathing assembly for delivering a breathable gas and fuel gas to a user.

The Examiner stated that inventions are distinct for the following reason:

(A) inventions of all groups are unrelated because the different invention of the method of Group I is not required for the devices of the other groups, the helmet and means of generating fuel of Group V is not needed for any other group, the chamber exposure structure of Group IV is not needed for any other group, the building of Group III is not needed for any other group and the ventilator of group II is not needed for any other group;

(B) these inventions have acquired a separate status in the art as shown by their different

classification;

- (C) the search required for each group is not required for each other group; and
- (D) these inventions have acquired a separate status in the art because of their recognized divergent subject matter.

Applicant hereby provisionally elects Group I, claims 1-32, 52 and 58-60, with traverse of the restriction requirement. The restriction requirement is improper for the following reasons.

First, the above Examiner's reason "(A)" (i.e., Examiner's point 2) is not correct.

The reason "(A)" is based on the MPEP §806.04(A). On the other hand, the reasons "(B)," "(C)", and "(D)" are based on the MPEP §808.02. MPEP §808.02 is applied where the several inventions claimed are related. The Examiner contended in the reason "(A)" that the inventions of all groups are unrelated, and the Examiner assumed in the reasons "(B)", "(C)", and "(D)" that the inventions of all groups are related because the Examiner applied MPEP §808.02 in the reasons "(B)", "(C)", and "(D)". If the Examiner selects the reason "(A)", the other reasons cannot be argued as additional reasons. Even if the Examiner selects only the reason "(A)," the reason is not correct because Group I is a method claim and Group II, III, and IV are apparatus claims performing the method claimed in Group I. Thus, Groups I, II, III, and IV are related.

Second, the above Examiner's reasons "(B)", "(C)", and "(D)" are not correct for the following reason.

The Examiner argued when making the restriction requirement that Groups I, II, III, IV and V were classified in different classes. Applicant notes that class 128, subclass 203.12 should be assigned to all of the groups. Class 128 covers methods and apparatus wherein specific structure, adapted to be placed on or in the living body, is claimed, and subclass 203.12 covers means for mixing treating agent with respiratory gas. Thus, class 128, subclass 203 covers all of the Groups of the present application. In view of and the object of the present invention and the claims (*i.e.*, “for providing protection from reactive oxygen species”), class 128, subclass 203,12 should be assigned to each group rather than the classes assigned to each group by the Examiner

Finally, the examination on all of the claims does not place an undue burden on the Examiner.

As stipulated in MPEP §803, if the search can be made without serious burden, the examiner must examine it on the merits.

Applicant notes that the claims of Group II, III, IV and V recite apparatus for delivering breathable gas and fuel gas to a user, and that references found in the search of Group I which recites a method for protecting against oxygen free radical by manipulating the concentration of fuel gas in tissues will generally describe apparatus of performing the process. Thus, little additional search and examination is required for the claims of Group II, III, IV and V. Therefore, the examiner must examine the entire application.

In view of the foregoing Applicant respectfully requests that the requirement be withdrawn

upon reconsideration.

## **II. Election of Species Requirement**

The Examiner has additionally required us to elect a species under 35 USC §121, between species A-A, a method of protecting tissue free radicals by manipulating of fuel gas concentration in the tissue (claims 1-7), and species BA, a method of protecting free radicals by manipulating fuel gas concentration in the tissues by pulmonary delivery and manipulation (claims 8-32, 52 and 58-60)

Applicant hereby provisionally elects species A-A, claims 1-7 restriction requirement. The restriction requirement is improper for the following reasons.

First, claims 1-7 are not species.

Species are not claims, but are different disclosed embodiments of an invention. Species are always the specifically different embodiments. (See MPEP §806.04(e)).

Here, claims 1-7 claims a method of providing protection from reactive oxygen species by raising the concentration of a first fuel gas compound in the tissue. Claims 8-32, 52 and 58-50 claims one of those methods claimed in claims 1-7. Since claims 1-7 and claims 8-32, 52 and 58-50 define the different scope of the same subject matter, the Examiner's request for election of species should be withdrawn.

Second, the examination on all of the claims 1-32, 52 and 58-60 does not place an undue burden on the Examiner.

As stipulated in MPEP §803, if the search can be made without serious burden, the examiner must examine it on the merits.

Here, all of claims 1-32, 52 and 58-60 are related to the method of providing protection from reactive oxygen species. The Examiner assigned the same class to all these claims. The Examiner has not alleged any serious burden, therefore, the examiner must examine the entire application.

In view of the forgoing Applicant respectfully requests that the requirement be withdrawn upon reconsideration.

This response is believed to be a complete response to the requirement for election. Should questions remain unresolved, the Examiner is requested to telephone the Applicant's attorney.

A fee of \$9.00 is incurred by the addition of one (1) claim in excess of 60. Applicant's check drawn to the order of Commissioner accompanies this Response. Should the check become lost, should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Should a Petition for extension of time be required with the filing of this response, the Commissioner is kindly requested to treat this paragraph as such a request and is authorized to

charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of the incurred fee if a check of the requisite amount is not enclosed.

Respectfully submitted,



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS**

Please add new claim 61 as follows:

1       --61. The method of claim 8, the breathable composition being provided under a hyperbaric

2       conditions.--